



## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket No. MSHA-2023-0014 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2023-0014.
2. *Fax:* 202-693-9441.
3. *Email:* [petitioncomments@dol.gov](mailto:petitioncomments@dol.gov)
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [Petitionsformodification@dol.gov](mailto:Petitionsformodification@dol.gov) (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

## **II. Petition for Modification**

Docket Number: M-2023-008-C

Petitioner: American Consolidated Natural Resources, Inc., 46226 National Road, St. Clairsville, Ohio 43950.

Mines: Harrison County Mine, MSHA ID No. 46-01318, located in Harrison County, West Virginia; Marion County Mine, MSHA ID No. 46-01433, located in Marion County, West Virginia; Ohio County Mine, MSHA ID No. 46-01436, located in Marshall County, West Virginia; and Marshall County Mine, MSHA ID No. 46-01437, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit use of the CleanSpace EX Powered Respirator, a nonpermissible battery powered air-purifying respirator (PAPR), in or inby the last open crosscut.

The petitioner states that:

(a) The petitioner has approved petitions for modification for 30 CFR 75.507-1(a) and 75.1002(a) to permit the use of the CleanSpace EX in areas where permissible equipment is required.

(b) The petitioner previously used 3M Airstream helmet PAPRs to provide miners with respirable dust protection on the longwall faces.

(c) 3M discontinued the Airstream helmet, and there are no other MSHA-approved PAPRs.

(d) The CleanSpace EX is certified by UL under the ANSI/UL 60079-11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(e) The CleanSpace EX Power Unit has been determined to be intrinsically safe under IECEx and other countries' standards.

The petitioner proposes the following alternative method:

(a) The equipment shall be examined at least weekly by a qualified person in accordance with 30 CFR 75.512-2. Examination results shall be recorded weekly and may be expunged after 1 year.

(b) The petitioner shall comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 shall monitor for methane in the affected area of the mine as is required by the standard.

(d) When not in operation, batteries for the PAPR shall be charged on the surface or underground in intake air and not in or inby the last open crosscut.

(e) The following battery charging products shall be used: PAF-0066 and PAF-1100.

(f) Qualified miners shall receive training regarding safe use of, care for, and inspection of the PAPR, and on the Proposed Decision and Order before using equipment in the relevant part of the mine. A record of the training shall be kept and be made available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

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Song-ae Aromie Noe,

Director,

Office of Standards, Regulations, and Variances.

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